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Auchmuty, Rosemary; Rackley, Erika

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THE WOMEN'S LEGAL LANDMARKS PROJECT: CELEBRATING 100 YEARS OF WOMEN IN LAW IN THE UK AND IRELAND

Rosemary Auchmuty* and Erika Rackley**

Abstract

The paper introduces the Women's Legal Landmarks project. The project is an interdisciplinary collaboration involving feminist scholars from law and other disciplines engaging in the process of identifying, researching and producing critical accounts of the key legal events, cases and statutes which represent significant turning points for women in the UK and Ireland. In creating the first scholarly anthology of legal landmarks for women spanning four jurisdictions and spanning eleven centuries, it seeks to contribute both to the development of the discipline of feminist legal history as well as societal understandings of the contribution women have made to public life and, more specifically, their involvement in the production of law, law reform and justice.

2019 marks the centenary of women's admission into the legal profession in the UK and Ireland. The Sex Disqualification (Removal) Act 1919, coming only a year after (some) women were given the parliamentary vote through the Representation of the People Act 1918, marked the formal entry of women into the law-making processes. Feminists and others who had campaigned for these legal reforms looked forward to a new era in which women's voices would be heard, women's concerns addressed, and women's injustices and inequalities righted. The centenary in 2019 offers an opportunity to mark and assess women's progress toward these hopes.

About the project

The Women's Legal Landmarks Project is a unique interdisciplinary collaboration involving feminist legal and history scholars engaging in the process of 'landmarking' key legal events, cases and statutes for women in the UK and Ireland. Such landmarks – significant achievements marking an important stage or turning point in women's engagement with law and law reform – cover a range of topics, including the right to vote, sex discrimination, equal pay, forced marriage, prostitution, rape, twitter abuse and the ordination of women bishops as well as the life stories of a number of women who were the first to undertake key legal roles and positions. By combining legal and historical expertise, different disciplinary approaches and sources to create the first comprehensive scholarly anthology of the legal landmarks for women (c.950-2015), the project seeks to demonstrate, in a sustained and disciplined way, women's agency and activism in the achievement of law reform and justice, and to embed women's legal history in legal scholarship and mainstream knowledge.

The project has both academic and political ambitions. Academically, it seeks to provide a way into an under-explored research methodology in the UK and Ireland, where legal history remains a niche subject. It aims to provide fresh perspectives and expertise on archival materials both for legal scholars, who may not ordinarily access such material, and historians, who may see such material with fresh eyes informed by a critical legal perspective. To this end, the project harnesses the subject-specific expertise and disciplinary knowledge of both historians and lawyers, to ensure the accurate interpretation of complex legal provisions in their correct historical context. At the same time it offers a direct challenge to the tendency of legal historians (that is, those trained and identifying primarily as lawyers) to focus on specifically *legal* sources which (given that women were excluded from public office and practical involvement in law until the twentieth century and continue to this day to be in a substantial minority in the law-making process) typically have a partial (masculine) outlook or bias. By exposing legal doctrine to historiography – the idea that history is not simply a collection of established facts assembled in an unchallengeable narrative but can be, and has been, written from a

* Professor of Law, University of Reading and co-organiser of the Women's Legal Landmarks Project.

** Professor of Law, University of Birmingham and co-organiser of the Women's Legal Landmarks Project.

range of perspectives and viewpoints – the project aims to foster a broader study of law reform and legal change across academic disciplines. In particular, it seeks to challenge the traditional 'top-down' gender-neutral understanding of law, which all too often emphasises legal actors (mainly judges) rather than the politics and/or activism that influenced court or Parliament and which (mis)presents law reform as a tale of steady progress from injustice and inequality toward justice and equality, as enlightened institutions gradually reform themselves.

Politically, through the recognition of hitherto overlooked or suppressed histories, the project challenges the continued marginalisation of women in law, public policy and social justice. It seeks to provide a deeper understanding of the impact of law on the lived experience of women and the impact of women on law, offering historical insights as potential avenues for contemporary strategies for feminists and others engaging with and effecting legal, social, policy and political change.

The landmarks

While some of the landmarks are familiar steps in the history of women's emancipation (e.g. the **Married Women's Property Act 1882**, which gave married women the ability to own and manage property independently of their husbands), the **Representation of the People Act 1918** (which gave women over 30 the vote), the **Dagenham car plant strike of 1968** (which led to the Equal Pay Act 1970) and **R v R [1991]** (which removed the marital rape exemption in England & Wales), others are less familiar as feminist landmarks and/or to non-lawyers (e.g. **Gill v El Vino [1983]**, which overturned a rule that women would not be served at a London bar), **R v Davies [1995]** (the first civil prosecution for rape) and the **Maternal and Child Welfare Act 1918** (which obliged local authorities to set up maternal and child welfare clinics). The landmarks are drawn from all areas of law including family law, criminal law, EU and international law, employment law, tax law, discrimination law, medical and healthcare law, human rights and public law, and property law – as well as from outside traditional legal categories (e.g. **Barbara Leigh Smith Bodichon's A Brief Summary of the Most Important Laws Concerning Women, 1854** (which set out the law which shaped and underpinned campaigns for women's rights), **A Pageant of Great Women 1909-1912** (which presented arguments for women's enfranchisement) and **Atkins and Hoggett's Women and the Law, 1984** (the first textbook on women and law).

While the majority are English and Welsh or UK landmarks, they are drawn from across the four jurisdictions that make up the UK and Ireland. Coincidentally, however, two Welsh landmarks bookend the project: the **Laws of Hywel Dda**, which sets out the legal status of women in mediaeval Wales from c.950, and the **Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Act 2015**. We have also included short biographies of 'first' or 'landmark' women (including **Ivy Williams, Brenda Hale, and Patricia Scotland**). These represent the achievements of practising and academic lawyers and allow for the exploration of their role in the substantive landmarks considered (e.g. **Helena Normanton** and the **Sex Disqualification (Removal) Act 1919**) as well as for a direct consideration of their differences in viewpoint, ambition and feminism.

What all the landmarks have in common is that they were *positive for women*. Of course, this does not mean that they were necessarily the end of the story – as demonstrated by the inclusion of **Dagenham car plant strike (1968)** and UK Supreme Court case of **Birmingham City Council v Abdulla [2012]** (which allowed women to present equal pay claims in the High Court within a 6-year limitation period instead of 6 months in the Employment Tribunal). Nor does it mean that they were equally positive for *all* women (the **Married Women's Property Acts 1870-1882**, for example, only benefited the relatively few women with private property, though it had important symbolic significance). Taken together, however, the landmarks reveal the roles that women and women's lives have played in the process of law reform and production of law, often hidden and/or distorted in conventional historical accounts. As such the project provides a novel approach to questions about women's relationship with law and law reform. In declaring a particular event, case or statute to be a 'landmark', significant to the advancement of women's legal status, we create a point of comparison – a spotlight on not only where we have come from but also how far we have to go. After all, why is it that over 40 years since the enactment of equal pay provisions there is still a pay disparity between

men and women? Why is it that, as we celebrate the centenary of women's entry to the legal profession, there just one woman on the UK's highest court?

Feminist legal history

From the outset, we realized that the project's scope and ambition would require a large number of participants with a range of expertise. We therefore issued a call for expressions of interest, and received an outstanding response, enabling us to select over 100 landmarks. We also 'commissioned' a number of landmarks directly to ensure the comprehensive and reflective coverage of topics, historical periods and jurisdictions. The contributors committed to the project represent a wide range of legal, history, and criminology scholars, independent historians, parliamentary archivists, activists and practising lawyers, from leading experts in their field to postgraduate and early career researchers. Each 3000-word contribution will involve the integration of doctrinal, legal and historical analysis, feminist critiques of law and history, relevant socio-legal, policy and contextual materials, within distinct areas of substantive law.

Our chosen methodology is *feminist legal history*, which has been characterised as that which (1) locates women at the centre, rather than the margin, of events, (2) demonstrates the different impact of law on women and men, (3) integrates women's stories into received versions of history (from which they have generally been omitted) and (4) seeks to reconstruct the 'assumed contours' of the past.¹ It challenges the traditional understandings of both historians and lawyers of 'women's linear progress from oppression under the law to equal opportunity in modern times'.² Despite a growing interest in feminist legal history in the US,³ British legal history scholarship remains (with some notable exceptions focused on specific areas of law)⁴ largely dominated by men and masculine concerns and presented in top down fashion that downplays women's perspectives and women's agency, and often leaves out women altogether. Thus, in contrast to the well-established and vigorously theorised sub-discipline of feminist *history*, feminist *legal* history remains largely un-utilised as a resource or method within feminist legal scholarship in the UK and Ireland.

We have adopted this methodology with the aim of raising the profile of feminist legal history as a methodology among feminist legal scholars, historians and legal historians. The project seeks to embed feminist legal history within feminist legal scholarship methodology (which traditionally focuses on current legal issues, in line with feminism's dual role as a theoretical approach and a practical activism concerned with contemporary legal issues and change), as well as pushing the boundaries of knowledge and critical engagement in legal history more generally.

Participants in the project have committed to attending themed workshops the next eighteen months of two years, at one of which they will present their own landmark and receive feedback from the other participants. These meetings will ensure that knowledge, skills and expertise are shared, connexions made, and the project's aims and focus are fully understood. In addition, resources are shared via Dropbox online and training workshops have been integrated into our schedule. We have also set up a

¹ Thomas, T.A. and Boisseau, T.J. (eds), *Feminist Legal History: Essays on Women and Law*. New York: New York University Press 2011, p.1.

² Ibid p.2.

³ E.g. Spring, E., *Land, Law and Family: Aristocratic Inheritance in England, 1300 to 1800*. Chapel Hill: University of North Carolina Press 1993; Staves, S., *Married Women's Separate Property in England, 1660-1833*. Cambridge MA: Harvard University Press 1990; Stetson, D., *A Woman's Issue: The Politics of Family Law Reform in England*. Westport, CT: Greenwood Press 1982.

⁴ Auchmuty, R., 'Early Women Law Students at Cambridge and Oxford'. 29 *Journal of Legal History* (2008) 63-97; Auchmuty, R., 'Whatever happened to Miss Bebb? Bebb v The Law Society and women's legal history'. 31 *Legal Studies* (2011) 199-230; Auchmuty, R., 'Law and the Power of Feminism: How feminism lost its power to oppress women'. 20 *Feminist Legal Studies* (2012) 71-87; Auchmuty, R., 'Recovering lost lives: researching women in legal history'. 42 *Journal of Law and Society* (2015) 34-52; Polden, P., 'The Lady of Tower Bridge: Sybil Campbell, England's first woman judge', 8 *Women's History Review* (1993) 505; Polden, P., 'Portia's Progress: Women and the Bar, 1919-1939'. 12 *International Journal of the Legal Profession* (2005) 293.

Research Advisory Board of academics from both law and history, as well as representatives of the Law Society and, recognising the important contribution of the information services providers, the British Library and the Institute of Advanced Studies Library.

The contribution of libraries and archives

While some contributions will involve conventional, desk-based legal research methods drawing upon primary and secondary sources, many will involve archival research in national archives and specialist collections such as the Women's Library at the LSE and the Parliamentary Archives. Material consulted through these archives will include newspapers, personal correspondence, court records, and professional admission records. In June 2015 we held a very successful Archival Training Day at the Institute of Advanced Legal Studies in London, open to participants in the Project as well as other interested scholars working in the field. Representatives from the collections at the National Archives, the National Records of Scotland, the British Library, the Parliamentary Archives, Lincoln's Inn and the Institute Library itself each identified resources from their holdings that relate to the proposed landmarks and then led participants through the process of accessing and interrogating them, showing us how each source might be used in the creation of women's legal history. There was also a stirring keynote address by Rebecca Probert, whose well-regarded books on modern legal history⁵ are based on extensive use of a wide range of primary sources and archival material relevant to the Women's Legal Landmarks Project. Throughout the project we have enjoyed the active assistance of the Institute of Advanced Legal Studies, who hosted, filmed and made available the proceedings of the Archival Training Workshop,⁶ and with whom we plan future training opportunities and workshops. We are hugely indebted to them for their enthusiasm and material support for the project.

Because many of the landmarks in women's legal history took place within the last 50 years, a number of the contributions will adopt feminist oral history methods⁷ and will be written by, or draw in part on interviews with, people who participated in the landmark event (e.g. **Women's Peace Camp at Greenham Common, 1982, Concluding Observations of the UN Committee against Torture, 2011, s 37 of the Criminal Justice and Courts Act** (which criminalized the possession of pornographic images of rape)) or with the landmarkees directly (e.g. **Claire Palley**, the first woman law professor). Though these interviews will be used as a source for the contributions rather than an end in themselves, given the rapidity with which women's experience is erased from history we think it is important to capture these versions of events which, appropriately archived, may themselves become resources for future researchers.

Reaching our audience

We hope that the Women's Legal Landmarks Project will be of interest to wide range of people including legal historians, feminist legal scholars, other critical legal and history scholars, legal and history educators, librarians and archivists, those working in gender studies as well as members of the general public. It should interest university and school students seeking information about their own heritage, especially those in legal education where this is routinely ignored. And, though the jurisdictional focus is on UK and Ireland, the project's appeal is likely to be international.

The primary output will be a substantial 350,000 word edited collection, *Women's Legal Landmarks: Celebrating 100 years of Women in Law in the UK and Ireland*, published by Hart Publishing in 2017. An introductory chapter to the collection, written by the editors, will identify and discuss overarching and intersecting themes of the landmarks as group and locate them within an explanatory framework, addressing the methodology and substance of the contributions. It is intended that the collection, as the

⁵ For instance, *Marriage Law and Practice in the Long Eighteenth Century*, Cambridge UP 2009; *The Changing Legal Regulation of Cohabitation: from Fornicators to Family 1600-2010*, Cambridge UP 2012.

⁶ See the Institute of Advanced Studies' YouTube page:

<https://www.youtube.com/channel/UCNjnkXq2mIAIJ42jES2fJQ> [accessed 26 January 2016].

⁷ See Maynard, M. and Purvis, J (eds) *Researching Women's Lives from a Feminist Perspective*. London: Taylor & Francis 1994; British Library, 'Sisterhood and After: an oral history of the Women's Liberation Movement'. <http://www.bl.uk/learning/histcitizen/sisterhood/>, last accessed 2/11/14.

first scholarly anthology of its kind, will be a significant contribution to the academic literature in feminist legal history in the UK and Ireland, and indeed worldwide.

Alongside the edited collection, there will be project website which will provide an open, freely accessible platform, including text and pictures, to allow members of the public to access 500-word summaries of each landmark. From this we will link, where possible, to primary sources and relevant websites, to our Twitter feed (@womenslegallandmarks) as well as bespoke educational resources. The project website will also function as the public face of the project, ensuring as wide an audience as possible for the project's aims, the book, and future developments.

Watch this space!

Although feminist legal history as an academic discipline is in its infancy in the UK and Ireland, personal and social histories have been a source of enduring fascination for public audiences. Over the next few years, this interest is likely to focus on women's history with forthcoming centenaries of women's gradual entry into full citizenship, public life and the legal profession. Our hope is that the Women's Legal Landmark's Project will provide an immediate and ongoing focal point for a wide variety of academic and non-academic readers with an interest in women's legal history and history more broadly. In creating the first scholarly anthology of legal landmarks for women spanning over 1000 years, and by harnessing traditional and social media, the project will contribute to societal understandings of the contribution women have made to public life and, more specifically, their involvement in the production of law, law reform and justice.

Rosemary Auchmuty r.auchmuty@reading.ac.uk
Erika Rackley e.rackley@birmingham.ac.uk